IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.265 OF 2007

1. Shri Umesh Tukaram Kamble,
   age 32 years, Occ.Household.

2. Sau.Swati Balasaheb Kamble,
   age 32 years, Occ.Household.

3. Shri Shrikant Mahadeo Lohar,
   age 25 years, Occ.Agriculture.

4. Shri Sandeep Sadashiv Kshirsagar,
   age 35 years, Occ.Service.

5. Shri Dilip Dnyandeo Patil,
   age 35 years, Occ.Agriculture.

6. Shri Shankar Vyanku Patil,
   age 32 years, Occ.Agriculture.

7. Shri Amar Krishnat Shinde,
   age 32 years, Occ.Agriculture.

8. Shri Ramsing Bali Patil,
   age 50 years, Occ.Agriculture.

   All residents of Sagaon, Taluka
   Kagal, Dist. Kolhapur. ...Petitioners.

Vs.

1. Shri Shamrao Sakharam Patil,
   age 50 years, Occ.Agriculture.

2. Sau.Laxmi Ananda Patole,

age 35 years, Occ.Household.

3. Sau.Jayshree Baban Shinde,
age 30 years, Occ.Household.

4. Shri Arun Ganpati Ghule,
age 35 years, Occ.Agriculture.

5. Shri Prakash Shankar Patil,
age 45 years, Occ.Agriculture.

6. Shri Sadashiv Krishna Patil,
age 45 years, Occ.Agriculture.

7. Sau.Sunita Dilip Patil,
age 35 years, Occ.Household.

8. Sau. Ashatai Yuvaraj Patil,
age 35 years, Occ.Household.

9. Sau. Najama Rasul Mujawar,
age 45 years, Occ.Household.

10. Sau.Anusaya Balasaheb Patil,
age 47 years, Occ.Household.

11. Shri Manika Tanaji Dhule,
age 30 years, Occ.Household.

All residents of Sagaon, Tal.Kagal,
Dist. Kolhapur.

12. Shri Babasaheb Chogonda Patil,
Election Officer, Village Panchayat
Sagaon, Taluka Kagal,
Dist. Kolhapur.

13. Tahsildar, Tahsil Office, Kagal,

Dist. Kolhapur.

14. Shri Arvind Mahadeo Mali,
age 40 years, Occ.Agriculture.

15. Sau.Sulochana Babu Kumbhar,
age 47 years, Occ.Household.

16. Sau.Ranjana Prakash Patil,
age 30 years, Occ.Household.

17. Sau.Suman Balaso Patil,
age 42 years, Occ.Household.

18. Shri Krishnat Vasudeo Patil,
age 42 years, Occ.Household.

Nos.14 to 18 r/o.village Sagaon,
Taluka Kagal, Dist.Kolhapur.

19. Village Panchayat, Sagaon,
Taluka Kagal, Dist. Kolhapur. ...Respondents.

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Mr. V.B. Rajure for the Petitioners.
Mr. Amit Borkar for Respondent Nos.1 and 2.

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CORAM :DR.D.Y.CHANDRACHUD, J.
October 23, 2007.

JUDGMENT:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the contesting Respondents waives service.

At the request of Counsel taken up for hearing and final disposal.

An election was held under the provisions of the Bombay Village Panchayats Act, 1958 ("the Act") to the Village Panchayat of Sagaon in the Taluka of Kagal. The results of the election were declared on 20th June 2005. An election dispute was filed by the First to Eleventh Respondents before the Civil Judge, Junior Division, Kagal on 25th August 2005 under Section 15 of the Act. The dispute was filed after the lapse of a period of two months and four days; whereas under sub-section (1) of Section 15, the validity of an election to a Panchayat can be brought in question at any time within 15 days after the date of the declaration of the results of the election. An application for condonation of delay was filed on the ground that (i) The applicants were illiterate women; (ii) Certified copies of the documents were not received in time; (iii) An application was made to the Collector on 10th August 2005 which was decided on 19th August 2005; and (iv) Heavy rains had taken place, as a result of which the Advocate could not be contacted. The Petitioners opposed the application for condonation of delay.

By an order dated 4th October 2006, the Civil Judge, Junior Division at Kagal allowed the application and condoned the delay in filing the election dispute. The order of the Civil Judge, Junior Division, is called into question in these proceedings.

On behalf of the Petitioners, it has been urged that the provisions of the Limitation Act, 1963 were not attracted and the Learned Judge had no jurisdiction to condone the delay. The submissions urged on behalf of the Petitioners were to the effect that :

(i) The Civil Judge, Junior Division, exercises power as a *persona designata* under the Act. The provisions of the Limitation Act, 1963 which do not apply to a body other than a Court, would not be attracted;

(ii) The provisions of the Limitation Act, 1963 cannot be applied in a situation where a special statute such as the Bombay Village Panchayats Act, 1958 provides a period of limitation different

from the limitation prescribed under the former legislation and the provisions of the Limitation Act are excluded having regard to the scheme and object of the provisions contained in the special Act.

On the other hand, it was urged on behalf of the Respondents that the Civil Judge, Junior Division, is, for the purposes of an enquiry under Section 15(1), vested with all the powers of a Civil Court and there is no express exclusion of the applicability of Section 5 of the Limitation Act, 1963 by the provisions of the Bombay Village Panchayats Act, 1958. Consequently, it was submitted, the provisions of Sections 4 to 24 of the Limitation Act, 1963 are not excluded in their application to a proceeding before the Civil Judge, Junior Division, under Section 15(1). Reliance was placed on the provisions of sub-section (2) of Section 15 to urge that the vesting of the power of a Civil Court in the Judge who has to try an election dispute would indicate that Section 15 is not an exhaustive Code. The submission was that the provisions of the Limitation Act, 1963 would not be rendered inapplicable and in an appropriate case, the delay could be condoned under the provisions of Section 5.

Sub-sections (1) and (2) Section 15 of of the Bombay Village Panchayats Act, 1958 provide as follows:

> "15(1) If the validity of any election of a member of a panchayat is brought in question by any candidate at such election or by any person qualified to vote at the election to which such question refers such candidate or person may, at any time within fifteen days after the date of the declaration of the result of the election, apply to the Civil Judge (Junior Division), and if there be no Civil Judge (Junior Division), then to the Civil Judge (Senior Division), (hereafter, in each case referred to as "the Judge") having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question.
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> (2) Any enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary pass an order, confirming or amending the declared result, or setting the election aside. For the purposes of the said enquiry the said Judge may exercise all the powers of a civil court, and his decision shall be conclusive. If the election is set aside, a date for holding a fresh election shall forthwith be fixed under section 11."

Sub-section (3) of Section 15 provides that all applications received under sub-section (1) in which the validity of the election of members to represent the same ward is in question, shall be heard by the same Judge and in which the validity of the election of the same member

elected to represent the same ward is in question, shall be heard together. Sub-section (4) places an embargo on the Judge allowing the application to be compromised or withdrawn. A restriction is placed on the amendment of pleadings. Unless the Judge is satisfied that an application for compromise or withdrawal or for amendment of pleadings is bona fide and not collusive, such an application would have to be refused. Under clause (a) of sub-section (5), the Judge upon holding that the candidate has committed a corrupt practice has to declare such a candidate disqualified and to set aside the election. In a case to which clause (a) does not apply and the validity of an election is in dispute between two or more candidates, the Judge is empowered to declare, after scrutiny of the votes recorded, the candidate who has the greatest number of valid votes to be elected. Sub-section (6) of Section 15 contains a definition of the expression 'corrupt practice'. Sub-section (7) provides that an election shall not be set aside by the Judge if the validity of the election is brought in question only on the ground of an error made by the Officer charged with carrying out the rules made under Section 176 read with sub-section (2) of Section 10 and Section 11, or of an irregularity or

informality not corruptly caused.

Section 15A of the Act provides as follows :

> "15A. No election to any panchayat shall be called in question except in accordance with the provisions of section 15; and no court other than the Judge referred to in that section shall entertain any dispute in respect of such election."

The legislature has provided a period of fifteen days within which the validity of an election of a member can be brought in question. The period of fifteen days is to be reckoned from the date of the declaration of the result of the election. An application to challenge the validity of the election lies before the Civil Judge, Junior Division, and if there be no such Judge, then to the Civil Judge, Senior Division. The Judge has to conduct an enquiry. For the purposes of the enquiry, the Judge is empowered to exercise all the powers of a civil court. Upon such enquiry, the Judge is empowered to confirm or amend the declaration of the result given or to set the election aside.

Section 29(2) of the Limitation Act, 1963 provides as follows :

> "Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

The provisions of Section 29(2) of the Limitation Act, 1963 mandate that in order to attract the applicability of Sections 4 to 24 of that Act, two requirements have to be satisfied:

(i) There must be a provision for a period of limitation under any special or local law in connection with any suit, appeal or application; and

(ii) The prescription of a period of limitation under a special or local law should be different from the period prescribed by the Schedule to the Limitation Act, 1963. If these requirements are

fulfilled, Section 29(2) enunciates the consequences that would follow. These consequences are:

(i) Section 3 of the Limitation Act, 1963 would apply as if the period prescribed by the special or local law was a period prescribed by the Schedule; and

(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application, all the provisions contained in Sections 4 to 24 would apply in so far as and to the extent to which they are not expressly excluded by such special or local law.

By sub-section (1) of Section 15, the Bombay Village Panchayats Act, 1958, provides for a period of limitation viz., fifteen days from the date of the declaration of the result of the election in order to challenge the validity of the election. This prescription of the period of limitation is necessarily different from the period in the Schedule to the Limitation Act. As a consequence, for determining the period of limitation prescribed by the Bombay Village Panchayats Act, 1958, the provisions in Sections 4 to 24 of the Limitation Act,

1963 would apply only in so far as and to the extent to which they are not expressly excluded by the special or local law.

The words that are used in sub-section (2) of Section 29of the Limitation Act, 1963, are that Sections 4 to 24 will apply "only in so far as, and to the extent to which they are not expressly excluded by such special or local law". In **Hukumdev Narain Yadav v. Lalit Narain Mishra**,[1] the Supreme Court held that even if a special law does not exclude Sections 4 to 24 by an express reference, the Court can still examine whether and to what extent the nature of those provisions or the nature of the subject matter or scheme of the special law exclude their operation. The Supreme Court held thus:

> "It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is, in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be

1 AIR 1974 SC 480

> called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law excluded their operation."

The Supreme Court emphasised that whether Sections 4 to 24 of the Limitation Act, 1963 are applicable is not determined by the terms of those sections but by their applicability or inapplicability to the proceedings under the special or local law:

> "The applicability of these provisions has, therefore, to be judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act amended in S.29(2) of that Act."

Precedent on the subject would show that this principle has been applied by the Supreme Court in the context of the particular legislation that fell for consideration. In the **Union of India vs. M/s.Popular Construction Co.**,[2] the history and scheme of the

2 AIR 2001 SC 4010

Arbitration and Conciliation Act, 1996 were held to support the conclusion that the time limit prescribed under Section 34 to challenge an Award is absolute and could not be extended under Section 5 of the Limitation Act, 1963. The Supreme Court held that the words "but not thereafter" in the proviso to sub-section (3) of Section 34 would constitute an express exclusion within the meaning of Section 29(2) of the Limitation Act. Besides that, the Supreme Court observed thus:

> "Apart from the language,'express exclusion' may follow from the scheme and object of the special or local law. Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation."

In a case which arose under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, the Supreme Court held in **Nasiruddin vs. Sita Ram Agarwal**,[3] that the provisions of Section 5 of the Limitation Act, would not be applicable in the case of a default on the part of the tenant in depositing the rent under Section 13(4) following a determination of the rent by the Court. In **L.S. Synthetics**

3 (2003) 2 SCC 577

Ltd. vs. Fairgrowth Financial Service,[4] the Supreme Court held that under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, once the statutory operation relating to the attachment of the property of a notified person came into being, the duties and functions of the Special Court commence. The Supreme Court held that the Special Court, having regard to its nature and functions may be a Court under the Limitation Act, 1963. Yet having regard to the scope and object of the Act and in particular the fact that it is a complete code in itself, the period of limitation provided in the schedule appended to the Limitation Act, 1963 would have no application. In relation to the duties and functions required to be performed by a Court of Law, no period of limitation, the Supreme Court held, need be prescribed.

In the context of the law relating to elections, it needs to be emphasized that the right to contest an election originates in legislation enacted by Parliament or, as the case may be, the State legislatures in India. There is no common law right to contest an election. As the Supreme Court held, in **Charan Lal Sahu vs.**

4 (2004) 11 SCC 456

Nandkishore Bhatt,[5] the right that is conferred is a statutory right and the terms of the statute have to be complied with. The Supreme Court held thus :

> "There is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or on any principle of equity. This Court has held that the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. In N.P. Ponnuswami v. Returning Officer, Namakkal Constituency 1952 SCR 218 – (AIR 1952 SC 64) it was pointed out that strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the Legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."

The State Legislature while enacting the provisions of the Bombay Village Panchayats Act, 1958, legislated a specified period of limitation for challenging the validity of an election. An application to question the validity of the election of a member of a Panchayat has to be brought within 15 days after the date of the declaration of the

5 AIR 1973 SC 2464

result of the election. The object underlying the prescription of this period is that electoral disputes must be brought to adjudication on an expeditious basis. In a democracy, disputes in regard to the validity of elections must be resolved at the earliest. The necessity for repose is a matter of public policy. The resolution of electoral disputes cannot be relegated to an uncertain future. Elected representatives must be left unhindered in their task of governing. Section 15A furthers this object by enunciating that no election to a Panchayat shall be called in question except in accordance with the provisions of Section 15 and no Court other than the Judge referred to in that section shall entertain any dispute in respect of such an election. Section 15 makes detailed provisions in regard to the manner in which the validity of an election will be determined by the Judge and in respect of the procedure which is to be followed. Sub-section (2) of Section 15 undoubtedly provides that for the purposes of the enquiry, it is open to the Judge to exercise all the powers of a Civil Court. That however, refers to an enquiry upon which, as sub-section (2) provides, the Judge proceeds to pass an order confirming or amending the declared result or setting the election aside. In other

words, sub-section (2) contemplates an election petition which is instituted within the prescribed period of fifteen days. The powers of the Civil Court that are conferred upon the Judge by sub-section (2) of Section 15 cannot, by any logic, be extended to the condonation of delay in bringing the election petition within the prescribed period of fifteen days from the date of the declaration of the result. A construction that would be opposed to the mandate of sub-section (1) and which would negate the underlying object of prescribing a period of limitation of fifteen days must be eschewed. In these circumstances, the provisions of Section 15 and the underlying object lead to the conclusion that the applicability of the provisions of Section 5 of the Limitation Act, 1963 stands expressly excluded by the special or local law. To recapitulate, it is a settled principle that even in the absence of an express reference under the special law, it is open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and the scheme of the special law exclude their operation. The nature of the provisions contained in Section 15(1), the nature of the subject matter and the scheme of the special law in the present case exclude the application

of Section 5 of the Limitation Act, 1963.

On behalf of the Respondents reliance was sought to be placed on the judgment of the Supreme Court in **Mukri Gopalan vs. Cheppilat Puthanpurayil Aboobacker.**[6] The question that fell for determination by the Supreme Court there was, whether the Appellate Authority constituted under Section 18 of the Kerala Rent Control Act, 1965 had the power to condone the delay in filing an appeal. The Supreme Court adverted to the position that when the earlier Rent Act of 1959 was in force, there was an express provision by which Section 5 of the Limitation Act, 1908 was to apply to proceedings under the Act. That was because under the earlier Limitation Act of 1908, it was enacted in sub-Section (2) of Section 29 that the provisions contained in Sections, 4, 9 to 18 and 22 would apply in so far as and to the extent to which they were not expressly excluded by the special or local law and the remaining provisions of the Act would not apply. When the Limitation Act, 1963 was enacted, Section 29(2) was enacted with the difference that once the requisite conditions for its applicability were attracted, the provisions of Sections 4 to 24

6 (1995) 5 SCC 5

would apply which would necessarily bring in Section 5 of the Limitation Act, 1963 unless it was expressly excluded by a special or local law. As a result, in the Kerala Rent Act, 1965, there was no necessity to expressly state that Section 5 of the Limitation Act, 1963 shall apply to the determination of proceedings under the Act. In the subsequent judgment of the Supreme Court in **Gopal Sardar vs. Karuna Sardar**,[7] the Supreme Court noted that this was a distinguishing aspect of the earlier judgment in **Mukri Gopalan** (at paragraph 15, pages 266, 267).

The judgment in **Shaikh Saidulu vs. Chukka Yesu Ratnam**,[8] is clearly distinguishable. In that case, a period of limitation of two months was provided by Section 71(2) of the Hyderabad Municipal Corporations Act, 1955 for bringing an Election Petition before an Election Tribunal for calling in question an election of a returned candidate. Under Section 671 of the Act, it was provided that in computing the period of limitation fixed for an appeal or an application under the Act, the provisions of Sections 5, 12 and

7 (2004) 4 SCC 252
8 (2002) 3 SCC 130

13 of the Limitation Act, 1963 shall so far as may be, apply. The Supreme Court held that the High Court was not justified in holding that an election petition was not an application within the meaning of Section 671 of the Act. The Court held that the expression "application" could be understood in a generic sense as a prayer made to an authority for some relief to set aside an order of another authority. That was, therefore, a case where under the Hyderabad Municipal Corporations Act, 1955, there was a specific provision under which Section 5 of the Limitation Act, 1963 was made applicable in computing the period of limitation for filing an application. An Election Petition was held to be within the scope and purview of Section 671.

At this stage, it would be necessary to note that a Learned Single Judge of this Court has held in **Shankar Sadu Pawar vs. Babu Laxman Dalvi**,[9] that the Civil Judge, Junior Division who entertains an election petition under Section 15 of the Bombay Village Panchayats Act, 1958 is a *persona designata* and not a Court. Consequently, it

9 1999 Vol.101(3) Bom. L.R. 689

has been held that in the proceedings before the Judge as a *persona designata*, the provisions of the Limitation Act, 1963 would not be attracted since the scheme of the Limitation Act prescribes that it only deals with applications to Courts. A similar view appears to have been taken in an earlier judgment of this Court in **Sukhadev Vs. Jagdeo**,[10] which contains a note on the case. For the purposes of these proceedings, it is not necessary to dwell on this aspect of the matter in the view which has been formed in the earlier part of the judgment. On the view which has been taken, the conclusion which has been drawn is that having regard to the nature of the underlying scheme of the provision and the object which forms the foundation of prescribing a special period of limitation in the contest of a challenge to the validity of an election under the Bombay Village Panchayats Act, 1958, the provision of Section 5 of the Limitation Act, 1963 would stand excluded.

The order of the Learned Civil Judge, Junior Division, condoning the delay in filing the election petition was clearly without jurisdiction. The election petition was filed beyond the statutorily

10 1963 Mh. L.J. 53 Notes of Cases

prescribed period of fifteen days from the date of the declaration of the result. The election petition was consequently liable to be dismissed. The petition shall accordingly stand allowed. The impugned order dated 4th October 2006 shall stand quashed and set aside. The application for condonation of delay shall stand dismissed. The Election Petition shall stand dismissed on the ground that it was presented beyond the period of fifteen days prescribed by sub-section (1) of Section 15 of the Bombay Village Panchayats Act, 1958. There shall be no order as to costs.

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